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Hawkes, M. Pena, R. Moore, K. McGuyer, C.  
10 Scavetta, and G. Kelly

11  
12 IN THE UNITED STATES DISTRICT COURT  
13 FOR THE NORTHERN DISTRICT OF CALIFORNIA

14  
15 **JACK L. MORRIS,**

16 Plaintiff,

17 v.

18 **ROBERT A. HOREL, WARDEN, et al.,**

19 Defendants.

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22  
23 TO PLAINTIFF, IN PRO SE:

24 PLEASE TAKE NOTICE that Defendants R. Horel, R. Rice, D. Hawkes, M. Pena, R.  
25 Moore, K. McGuyer, C. Scavetta, and G. Kelly (Defendants) request that this court screen the  
26 Complaint under 28 U.S.C. § 1915A, and Defendants waive their right to reply to the Complaint  
27 under 42 U.S.C. § 1997e(g).  
28

Not. Mot. & Mot. Screen Compl.; Waiver of Reply

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CV 07 Case No. 6060

(Del Norte County Superior  
Court, Case No. CVP1 07-1388)

**DEFENDANTS' NOTICE OF  
MOTION AND MOTION  
THAT THE COURT SCREEN  
PLAINTIFF'S COMPLAINT  
UNDER 28 U.S.C. § 1915a;  
WAIVER OF REPLY UNDER  
42 U.S.C. § 1997e(g)**

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J. Morris v. Horel, et al.  
Case No. \_\_\_\_\_

1       **A. Background**

2       Defendants removed this case from the Superior Court of California, County of Del Norte,  
3 to this Court, under 28 U.S.C. § 1441(b) on November 30, 2007. Defendants must respond to  
4 Plaintiff's Complaint within five days after filing their Notice of Removal. Fed. R. Civ. P. 81(c).  
5 Defendants waive their right to reply, however, so that the Court may screen the Complaint under  
6 28 U.S.C. § 1915A.

7       **B. Defendants Request that the Court Screen Plaintiff's Complaint Under 28 U.S.C.**  
8       **§ 1915A.**

9       Under 28 U.S.C. § 1915A, "[t]he court shall review, before docketing, if feasible, or in any  
10 event, as soon as practicable after docketing, a complaint in a civil action in which a prisoner  
11 seeks redress from a governmental entity or officer or employee of a governmental entity." Upon  
12 such review, the Court shall identify cognizable claims or dismiss any or all portions of the  
13 complaint if the complaint "is frivolous, malicious, or fails to state a claim upon which relief may  
14 be granted." 28 U.S.C. § 1915A(b).

15       Thus, Defendants request that the Court screen Plaintiff's Complaint and dismiss, if any,  
16 those claims and Defendants it believes should be dismissed.

17       **C. Defendants Waive their Right to Reply to Plaintiff's Complaint.**

18       Defendants waive their right to reply to Plaintiff's Complaint. Under 42 U.S.C. § 1997e(g),  
19 "[a]ny defendant may waive the right to reply to any action brought by a prisoner confined in any  
20 jail, prison, or other correctional facility under . . . Federal law. Notwithstanding any other law  
21 or rule of procedure, such a waiver shall not constitute an admission of the allegations contained  
22 in the complaint. No relief shall be granted to the plaintiff unless a reply has been filed."  
23 However, "the Court may require any defendant to reply to a complaint brought under this  
24 section if it finds that the plaintiff has a reasonable opportunity to prevail on the merits." 42  
25 U.S.C. § 1997e(g)(2).

26       Assuming that the Court does not dismiss the Complaint in its entirety, Defendants request  
27 that the Court allow sixty days from the date of the Court's order for Defendants to file their  
28 responsive pleading. If additional defendants are ordered to be served, Defendants respectfully

1 request that, in the interest of judicial efficiency and the efficiency of the parties, the Court set  
2 one responsive pleading date sixty days after the final defendant has been served.

3 **D. Conclusion**

4 Defendants respectfully request that the Court screen Plaintiff's Complaint under 28 U.S.C.  
5 § 1915A. Furthermore, in order to allow the Court sufficient time to complete a screening,  
6 Defendants waive their right to reply to Plaintiff's Complaint under 42 U.S.C. § 1997e(g).

7  
8 Dated: November 29, 2007

9 Respectfully submitted,

10 EDMUND G. BROWN JR.  
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11 DAVID S. CHANEY  
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18 Attorneys for Defendants R. Horel, R. Rice, D. Hawkes, M. Pena,  
19 R. Moore, K. McGuyer, C. Scavetta, and G. Kelly

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**DECLARATION OF SERVICE BY U.S. MAIL**

Case Name: **J. Morris v. Horel, et al.**

No.: **CVP1 07-1388**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collection and processing of correspondence for mailing with the United States Postal Service. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service that same day in the ordinary course of business.

On **November 30, 2007**, I served the attached

**DEFENDANTS' NOTICE OF MOTION AND MOTION THAT THE  
COURT SCREEN PLAINTIFF'S COMPLAINT UNDER 28 U.S.C. § 1915a;  
WAIVER OF REPLY UNDER 42 U.S.C. § 1997e(g)**

by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

**Jack L. Morris, C-06409  
Pelican Bay State Prison  
P. O. Box 7500  
Crescent City, CA 95531-7500  
Pro Per**

I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on **November 30, 2007**, at San Francisco, California.

\_\_\_\_\_  
M.M. Argarin  
Declarant

\_\_\_\_\_  
*M.M. Argarin*  
Signature